

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERROLL FLYNN SHEPARD,

Defendant.

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CASE NO. 8:02CR353

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Defendant's motion to continue the deadline for filing a motion to vacate, etc., pursuant to 28 U.S.C. § 2255 and request that he be returned to his original place of incarceration (Filing No. 605).

§ 2255 Motion

The deadline for the filing of a § 2255 motion is a "period of limitation." 28 U.S.C. § 2255; Rule 3(c) Governing Section 2255 Proceedings for the United States District Courts. The doctrine of equitable tolling may apply under the following circumstances: 1) when "extraordinary circumstances" beyond a movant's control do not allow for the timely filing of a petition; and 2) where the government's conduct "lulls" the movant into inaction through reliance on that conduct. *United States v. Hernandez*, 436 F.3d 851, 858 (8th Cir.), *cert. denied*, 126 S. Ct. 2341 (May 30, 2006).

In this case, the Amended Judgment following the Defendant's resentencing proceeding was filed on June 7, 2007. (Filing No. 595.) The Defendant argues that he is in transport and not near his personal legal file. The deadline for filing the Defendant's § 2255 motion is not imminent, and at this time no "extraordinary circumstances" or government conduct appear to prevent the timely filing of a § 2255 motion.

Institution

Shepard asks that the Court assist his placement in his prior place of confinement. Shepard was previously at FCI Victorville in Victorville, California. In the Amended Judgment, the Court recommended that he be placed in a federal facility as close to California as possible. The Court may only recommend placement, and the details of inmate placement are then decided by the U.S. Bureau of Prisons.

CONCLUSION

For these reasons, the Defendant's motion (Filing No. 605) is denied.

IT IS ORDERED that the Defendant's motion (Filing No. 605) is denied.

DATED this 11th day of September, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge